

BRONSTEIN, GEWIRTZ & GROSSMAN, LLC

PLEASE RESPOND TO:

144 N. BEVERWYCK ROAD, # 187
LAKE HIAWATHA, NEW JERSEY 07034
TELEPHONE: (973) 335-6409
TELECOPIER: (973) 335-3717
E-mail: *neil@bgandg.com*

PERETZ BRONSTEIN (NY)
EDWARD N. GEWIRTZ* (NJ AND NY)
NEIL GROSSMAN (NJ AND NY)

NEW JERSEY OFFICE
40 CALUMET AVENUE
LAKE HIAWATHA, NJ 07034

* REGISTERED PATENT ATTORNEY

NEW YORK OFFICE
60 EAST 42ND STREET
SUITE 4600
NEW YORK, NY 10165
(212) 697-6484

May 5, 2010

VIA ELECTRONIC FILING

Hon. Esther Salas, U.S.M.J.
United States District Court for
the District of New Jersey
50 Walnut Street, Room 2060
Newark, New Jersey 07101

Re: *N.V.E., Inc. v. Jesus Palmeroni, et als.*
Docket No.: 2:06-CV-05455 (GEB) (ES)

Dear Judge Salas:

I am obliged to respond to Mr. Samaro's letter to you of yesterday seeking leave to file (a) a motion to strike unspecified portions of Mr. Palmeroni's recently filed application for a protective order, and (b) a sanctions motion against me because of outrageous flouting of evidentiary rules in connection with that application and more broadly, because of my overall impertinence.

I must acknowledge that in preparing the protective order application, I did not consider the Federal Rules of Evidence; never have I seen those Rules come into play in any way during motion practice except perhaps in connection with summary judgment motions. Indeed, in support of NVE's contention that Mr. Palmeroni's protective order may be struck for non-compliance with the evidentiary rules, counsel cites only summary judgment decisions decided on the basis of Fed. R. Civ. Proc. 56, which

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has no application here. In one such case, Moret v. Geren, 494 F. Supp. 2d 329, 336 (D. Md. 2007), the court stated that "an affidavit filed in opposition to a motion for summary judgment must present evidence in substantially the same form as if the affiant were testifying in court." (Emphasis supplied). The issue in Geren was whether or not an affidavit that seemed to contradict the affiant's prior testimony ought to be struck. No one in that case moved to strike on the basis suggested in counsel's letter, i.e., "truly outrageous and inflammatory descriptions" of litigants.

Likewise, in the only other case cited by NVE, Wildmon v. EMC Nat'l Life Co., 2009 U.S. Dist. LEXIS 19240 (N.D. Miss. 2009), the court explicitly applied the summary judgment standards of Fed. R. Civ. Proc. 56 to a motion to remand a previously removed case back to the state court system. Wildmon, 2009 U.S. Dist. LEXIS 19240 at *6 (court uses summary judgment procedure to decide motion) and *8 (affidavit struck where affiant lacks personal knowledge in violation of Rule 56(e)).

Accordingly, and without regard to the merits, legal support for a motion such as NVE wishes to file appears quite scant. With respect to the merits, such a motion would appear doomed to failure. It is hard to see how characterizing an admitted two-time felon as a criminal might be considered "truly outrageous and inflammatory", as counsel contends. Moreover, it is simply not the case that Mr. Palmeroni's pending motion for protective order is based on the bald proposition that Mr. Occhifinto is a person of bad character. The motion relies primarily on NVE's interrogatory responses and upon the transcript of the secretly recorded conversation that plaintiff has identified as the central item of proof of the fraud alleged.

Also doomed to failure would be counsel's desired sanctions motion against me for general "impertinent" conduct, purportedly following Cannon v. Cherry Hill Toyota, Inc., 190 F.R.D. 147, 161-63 (D.N.J. 1999), in which an attorney was sanctioned for "making unsubstantiated personal attacks on Plaintiff and her attorneys" and for thereby violating a number of Rules of Professional Conduct. NVE has identified nothing "unsubstantiated" in the evidence presented; nor has NVE identified any Rules of Professional Conduct that it believes were violated.

NVE counsel however also asks the Court to take into account Mr. Palmeroni's prior motions against plaintiff for dismissal and sanctions, which were denied, though hardly "roundly rejected",

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as NVE contends. The transcripts of the relevant hearings before Judge Brown and Judge Winfield show that both of those judges understood the issues I had raised, and that each had certain difficulties with the conduct of NVE's counsel. Neither judge suggested that the application had been made in bad faith.

The motions NVE desires to file thus appear to lack basis in law, and would serve only to waste the time and resources of the parties and the Court. Accordingly, it is my hope that leave to file them will not be granted.

Thank you for your consideration of the foregoing.

Respectfully submitted,

/s/ Neil Grossman
Neil Grossman

cc: Mr. Jesus Joseph Palmeroni
All Counsel of Record